IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 60 of 1995
WITH
COMPANY PETITION No. 01 of 1993
COMPANY PETITION No. 125 of 1994
COMPANY PETITION No. 01 of 1992
COMPANY PETITION No. 84 of 1993
COMPANY PETITION No. 47 of 1993
COMPANY PETITION No. 09 of 1993
COMPANY PETITION No. 191 of 1994
COMPANY PETITION No. 130 of 1992
COMPANY PETITION No. 133 of 1993
COMPANY PETITION No. 134 of 1994
COMPANY PETITION No. 55 of 1993
CIVIL APPLICATION No. 49 of 1994
CIVIL APPLICATION No. 95 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BOARD FOR INDUSTRIAL AND FINANCIAL RECORNSTRUCTION - Petitioner(s)
Versus
UNITY STEELS LIMITED - Respondent(s)

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Appearance :
BOARD OPINION for Petitioner No(s).: 1.
MR SI NANAVATI for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 07/07/2005

COMMON ORAL JUDGMENT

1. Company Petition No. 60 of 1995 has been registered on the basis of the opinion forwarded by the Board for Industrial and Financial Reconstruction (BIFR) vide letter dated 12.05.1995 to the Registrar of this Court under Section 20 (1) of Sick Industrial Companies (Special Provisions) Act, 1985. The Board has observed that no tangible development occurred during the interregnum which would enable reconsideration of the prima facie opinion formed earlier by the Bench. The turnaround plan submitted by the Company vide its letter dated 07.04.1995 did not

meet the acceptance of all concerned. The same did not include all the liabilities which the Company was saddled with. Besides plethora of claims have been lodged by the Creditors about which also the proposal was silent. Further the claim of the Company that no reliefs/concessions have been sought from the Banks and the Financial Institutions did not have any ground since reschedulement and funding of irregularities in working capital and more specifically pertaining to devolved letters of Credit have been sought for. Accordingly, the Board has confirmed its earlier prima facie opinion that the Company should be wound up under Section 20 of the Act.

2. This Court has issued notice on 30.11.1998. Thereafter on 19.07.1999, a detailed order was passed by this Court whereby the petition was admitted and order regarding advertisement was passed. The petition was to be advertised in 'Indian Express' – English Daily and 'Jansatta' –

Gujarati Daily. The Operating Agency, namely, I.F.C.I. was directed to see that the advertisements being published. Such advertisement shall be published on or before 12.08.1999 stating therein the date of final hearing to be 09.09.1999. Notice was also ordered to be published in Government Gazette. The Court has further observed that it would be open for any petitioning Creditors in other petitions to issue public advertisements in case the operating agency failed to issue public advertisements after obtaining necessary orders and in such eventuality, the date of final hearing might have to be changed. The office was directed to issue notice to the Operating Agency i.e. I.F.C.I.

3. This Court has thereafter passed further order on 01.03.2000 recording the statement of Ms. K.J. Brahmbhatt, learned advocate appearing for the Operating Agency, namely, I.F.C.I. that through oversight, the advertisement as directed by this

Court on 19.07.1999 could not be published and hence, more time was prayed for in the matter. Accordingly, the Court has directed the Operating Agency to publish the advertisement on or before 31.03.2000 and Govt. Printing Press, Rajkot was also to be informed on or before 10.03.2000.

4. Despite the aforesaid order, the advertisement could not be issued and hence, this Court has passed further order on 12.12.2000 appointing the Official Liquidator attached to this Court as the Provisional Liquidator of the respondent Company with a direction to take charge of all the assets of the Company with a further direction to take inventory of the assets and submit his report to the Court. He was further directed to issue notices with regard to admission of the petition in 'Indian Express' English Daily and 'Jansatta' – Gujarati Daily, on or before 30.12.2000. The petition was fixed for final hearing on 31.01.2001. The direction was also issued to

publish the public notice in Govt. Gazette and the Secured Creditors were directed to bear the cost of publication of notice and other incidental expenses.

5. Pursuant to the aforesaid order, the Official Liquidator has issued the advertisement of the petition in 'Indian Express' on 29.12.2000 and 'Jansatta' on 28.12.2000 and also published the advertisement in Govt. Gazette. The Official Liquidator has filed his report being O.L.R. No. 21 of 2001 in the present petition.

6. Since this Court has directed the Official Liquidator to take possession, Bank of India has moved M.C.A. No. 33 of 2004 in O.L.R. No.21 of 2001 seeking modification in the order passed by this Court on 12.03.2004 in O.L.R. No. 21 of 2001 by seeking direction that the amount realised as a result of the sale could not be disbursed without the order of Debts Recovery Tribunal at Ahmedabad.

This Court has passed an order on 25.06.2004 whereby the sentence “without permission of this Court” was substituted in lieu of “without permission of D.R.T.” and accordingly, the said application was disposed of.

7. So far as this petition is concerned, all formalities are over. The petition was admitted and advertised. The Official Liquidator was appointed as the Provisional Liquidator. The assets were also sold and to some extent, the disbursement of sale proceeds was also taken place. Hence, the formal winding up order is required to be passed in the matter. Since these matters could not be notified earlier, the order regarding winding up of the respondent Company was not passed.

8. In view of the earlier orders passed by this Court from time to time and in view of the fact that there is no possibility of revival of the

respondent Company as the financial substratum of the Company has gone down and assets were sold. The formal winding up order therefore needs to be passed in this petition. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator is already in charge of the property of the Company. He will now work as Liquidator of the Company and exercise all the powers conferred upon him under the Provisions of the Companies Act, 1956 and in accordance with the orders passed earlier in this proceeding. The Official Liquidator will inform the Ex-Directors of the respondent Company to file the Statement of Affairs, if not filed so far. The Official Liquidator shall invite the claims of the workers and the Creditors forthwith.

9. With this direction and observation, Company Petition No. 60 of 1995 is accordingly disposed of without any order as to costs.

10. In view of the order passed by this Court in Company Petition No. 60 of 1995, all other petitions as well as applications which are listed along with Company Petition No. 60 of 1995 stand disposed of as they no longer survive.

11. Office is directed to place copy of this judgment in each of the above petitions and applications.

[K.A. PUJ, J.]

Savariya